

**Topic : The Constitutional Significance of a Freedom of Information Regime in the Cook Islands**

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### Introduction

Esteemed colleagues from various jurisdictions present here today, I bring with me the warm and friendly greetings of the Government and People of the Cook Islands. My custom dictates that I greet you all today in my mother tongue: “Kia Orana tatou katoatoa I te aroa ma’ata o te Atua”.

To give you some context, I come from a tiny but beautiful island nation called the Cook Islands, named after the famous explorer Captain James Cook. The Cook Islands became a British protectorate in 1888. By 1900 administrative control was transferred to New Zealand. On the 4 August 1965 the Cook Islands became self - governing in free association with New Zealand. Last year we celebrated our 50<sup>th</sup> anniversary.

The Cook Islands is an ocean state which consists of 15 small islands scattered over approximately two million square kilometres of the Pacific Ocean. They lie in the centre of the Polynesian Triangle, flanked by Fiji to the west, Tahiti to the East, Hawaii to the north and New Zealand on the Southwest.

The fifteen islands are grouped in two: the Northern group more than 1,250 km from the capital, the northern group is made up of 7 low lying sparsely populated, coral atolls with very little arable lands. The Southern group within 300 km from Rarotonga have 8 islands, five of which are elevated fertile volcanic islands while the rest are atolls.

Travel to the outer islands are via Air Rarotonga (the Cooks only domestic airline) and by sea. To travel by air to the northern group takes up to 4 hours and return air fares per person is \$3,400. A trip by boat takes from 5-6 days one way.

The office of the Ombudsman under its traditional jurisdiction is responsible for the investigation of complaints under the Ombudsman Act 1984. In 2007, the offices’ jurisdiction widened to include the setting up of a Human Rights mechanism for the Cook Islands by way of a Cabinet Directive in November 2007, the OIA in 2008 and the Disability Act in 2008. Since I took office in 2012, the office was tasked with investigating complaints against Police under the Police Act 2012. In other jurisdictions complaints against Police is investigated by the Independent Police Complaints Authority.

### Background of OIA

The Official Information Act was passed by Parliament on 9 February 2008. A significant piece of legislation in that it was the first in the Pacific, so the eyes of the international community were on the Cook Islands and its ability to implement the act. Prior to the enactment, my predecessor Ombudsman Janet Maki embarked on a program to prepare government ministries, island councils and the general population for the implementation of the act to enable compliance. A large part of this program centred on improving record keeping practices within government. A mammoth task as record keeping management systems including trainings had not been undertaken on a government level, other than those ministries who were required to by legislation, for example Births, Deaths & Marriages (BDM) registers held by the Ministry of Justice.

This meant that the application of the Act had to be staggered to allow 7 Ministries to receive training on their legal obligations as well as undertake record keeping reviews and training on a 3 monthly roll over period.

### **Preparing Government for Implementation**

My predecessor recognised that not only was it crucial to prepare government to implement the new act, it was just as important to change the culture which permeated through government since it became self-governing over 50 years ago. A real and positive change from a 'culture of secrecy' to one of "openness and transparent". This change has not been an easy one as 'confidentiality' and 'secrecy' was entrenched in organisational cultures and practices. My office has found that these were more apparent between middle managers who felt protective over official information held by their respective ministries. Often Ministries and Islands Councils operate in isolation, hence more difficult to change attitudes. Some public servants during training programs felt that it was an added responsibility on what seemed to be an endless list of things to do. This was and remains to be an ongoing challenge to the successful implementation of the OIA. What has helped was identifying and working with "champions of change" within each ministry, a concept which worked with 'difficult' employees from within the organisation.

By the end of 2012, all 69 government ministries, crown agencies and Island councils had received trainings, again a difficult and long winded exercise in light of the geographic disparity of each of the islands from Rarotonga.

### **Investigations**

Eight years on, my office has seen a myriad of complaints under the OIA which has kept my small team of 5 very busy. Complaints of complex nature are seen to be on the rise as more and more citizens are exercising their rights under the OIA but also because Government Ministries are becoming more adept at challenging those rights under the Act. Following the New Zealand model I rely on my powers of persuasion to try and convince agencies to accept a provisional view and release information of their own volition, in preference to forming a final view and making a recommendation requiring the release of information. In some recent cases, I've found that finalising my opinion on the release had to be formalised.

### **Challenges that pose a threat to the intent and spirit of the OIA**

As complaints become more and more complex there is an increasing need for an in-house legal adviser. I am of the view that it is not sufficient for just a law graduate to take this post and that it should be someone who has worked in the Ombudsman environment and understands the role of the Ombudsman. Over the past 8 years we have relied on the New Zealand Ombudsman team who have provided both technical and legal assistance to my team and I. For this we are grateful to former Ombudsmen John Belgrave, Dame Beverly Waken and incumbent Ombudsman Judge Peter Boshier for their endless support.

In the past four domestic budget cycles' my office has seen budget cuts in crucial areas such as training, personnel and acquisition of critical case management system. It appears that my office is not a priority when it comes to the allocation of government resources. This has restricted my ability to provide on-going training and professional development for staff in terms of technical capacity, undertake on-going training programs to government ministries on various legal obligations and responsibilities under the Ombudsman's legislative framework. My office has consistently requested assistance from Government to fund the acquisition of a case management system to replace an old paradox 9 Landworx system donated by the New Zealand Ombudsman back in 2009, to no avail. The office is expected to perform extra duties with the very limited resources available to my office.

In the last ten years my office has relocated 5 times and remain in commercial properties where, consequently a large part of our operating funding is taken up with rent.

More and more of our investigations are taking longer to complete due to Ministries' inability to provide information requested and in many cases, the delay is due to poor record keeping practices in some ministries.

I have found in my tenure that Government has imposed new legislative and policy directives on my office with very little resources to allow my team and I to effectively carry out the work set out before us. This is in my view is an ongoing threat to the work of the Ombudsman, not just in the Cook Islands but around the region.

In my tenure I have also found that Heads of Ministries are challenging the authority of the Ombudsman, and this in a large part is due to the lack of the understanding of my role in government. Consistent delays in responding to my offices inquiries with many heads citing official overseas travel as reasons for failing to respond in a timely manner.

### **Conclusion**

Despite the increasing responsibilities and burdens placed on my office, my team continuous to work diligently with the limited resources it has to serve the people of the Cook Islands and continuously work with Government with the view to improving its administrative practices.

### **Recommendation**

Lastly, I offer a challenge to the International Ombudsman Institute to assist the Pacific in financing the great work of POA in light of austerity measures taking place throughout our development partners.

### **Acknowledgements**

At this juncture I would like to acknowledge the tireless and endless support of past New Zealand Ombudsmen and Judge Peter Boshier and his team. To the Pacific Ombudsman Alliance for its support and guidance over the years.

**Kia Orana, e Kia Manuia**

**Tearoa John Tini, Ombudsman Cook Islands**